

FILE/DIRECTION/ORDER

KOEHNEN J.

Court File No: CV-17-577020

WISEAU STUDIO, LLC and TOMMY WISEAU d.b.a. WISEAU-FILMS

Plaintiff(s)

V.

RICHARD HARPER, FERNANDO FORERO MCGRATH, MARTIC RACICOT D.B.A.
 ROCKHAVEN PICTURES, ROOM FULL OF SPOONS INC., PARKTOWN STUDIOS INC.,
 RICHARD STEWART TOWNS

Defendant(s)

CASE MANAGEMENT: YES NO

COUNSEL:

Tommy Wiseau on his own behalf and on behalf of Wiseau Studio LLC

Matthew Diskin on behalf of the defendants
 Meredith Bacal

 DIRECTION FOR REGISTRAR REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT NO ONE APPEARED ADJOURNED TO BE SPOKEN TO COURT

[1] This direction arises out of a case management conference call held on Monday, November 25, 2019.

[2] The purpose of the conference call was to address the defendants' request to have a motion scheduled before January 6, 2020 to dismiss the plaintiffs' claim. A 10 day trial is scheduled to begin in this matter on January 6, 2020. A trial would be necessary even if the defence motion were granted because the defendant has a counterclaim. The trial would, however, then be restricted to argument on the counterclaim.

[3] Although I am sympathetic to the reasons for which the defendants are bringing the motion, I was not prepared to schedule the motion. In my view the motion would lead to an unnecessary duplication of judicial resources assuming that a judge could even be found to address the motion before January 6, 2020.

[4] That said, I feel obliged to set out more information about the background of the case and the need to proceed with the trial on January 6, 2020 no matter what the circumstances.

[5] The defendants were prompted to bring the motion to dismiss the plaintiffs' case because the plaintiffs were in the midst of suffering a breakdown in their relationship with their counsel. This is, conservatively speaking, the plaintiffs' fourth counsel in this proceeding. I say conservatively speaking because the plaintiffs appear to have had a fifth firm act for them on a mediation in which I had no involvement.

[6] The defendants are understandably concerned that the plaintiffs will seek an adjournment of the January 6, 2020 hearing date because it is in the plaintiffs' tactical interest to do so.

[7] While I cannot bind the trial judge absolutely, I do wish to take this occasion to express my clear and firm view that there should be no adjournment of the trial date of January 6, 2020. The reasons for this view are set out below.

[8] The plaintiffs began this action 2 years ago as an urgent request for an ex parte injunction. The ex parte injunction was granted but then dissolved several months later after a hearing with notice. After that, the plaintiffs took no steps to move the action forward. The defendants say the action continued to be used however, as a threat by the plaintiffs against the defendants should they attempt to distribute the contested documentary that is at the root of this proceeding.

[9] In February 2019 the defendants sought a case conference with me and the plaintiffs' second counsel. The plaintiffs proposed to bring an anti-SLAPP (Strategic Litigation Against Public Interest) motion to strike the claim. As an alternative, I suggested a speedy case timetable that would get the matter to a trial quickly. In my view that might have been preferable because it would get the matter to a disposition on the merits in not much more time than an anti-SLAPP motion would and would diminish the risk of delay in the event the anti-SLAPP motion failed or even greater delay if the motion succeeded but was overturned on appeal.

[10] All parties agreed and a timetable was set which envisioned a trial in the early fall of 2019.

[11] Shortly after that, the relationship between the plaintiffs and their second counsel broke down. Counsel brought a motion to remove themselves from the record which I allowed. The plaintiffs took no steps to appoint new counsel even though they had several months notice of their second counsel's intention to remove themselves from the record. Had the plaintiffs appointed new counsel in a timely manner, the timetable that I set in February 2019 could have been met.

[12] The plaintiffs did not appoint new counsel until after I refused to grant a request for lengthy extensions to the case timetable to allow them more time to appoint replacement counsel.

[13] On May 8, 2019 I set a new timetable with the plaintiffs' third counsel and the defendants. That timetable envisaged completion of all evidentiary matters by the end of November and a trial shortly after that. The plaintiffs' third counsel agreed that the timelines were reasonable, raised no objections and made no arguments to the effect that the timelines were not achievable. The timetable was preemptory to the plaintiffs. On June 4, 2019 I set the trial date for January 6, 2019.

[14] By the early fall, the plaintiffs' third counsel advised me that they would need to remove themselves from the record. I urged Mr. Wiseau to appoint new counsel immediately. In a case conference of October 4, 2019 I told Mr. Wiseau that the matter would proceed to trial on January 6, 2020 despite any change in lawyers and that the existing timetable would not be changed. I also advised Mr. Wiseau that his new lawyers would need to start work immediately and would likely want a very large retainer given the volume of work they face and the history of this action. I confirmed these directions in my endorsement of October 4, 2019.

[15] In mid-October, 2019, the plaintiffs appointed their fourth counsel .

[16] By mid-November, 2019 the relationship between the plaintiffs and their fourth counsel had broken down and I was faced with another motion by counsel to remove themselves from the record.

[17] At the time of writing this endorsement, the plaintiffs are again without counsel. During the conference call for the scheduling of the defendants proposed motion I made it clear to Mr. Wiseau so that the January 6 trial date would not be postponed. I made the same thing clear to Mr. Wiseau a conference call with his fourth counsel on November 26, 2019 on the motion to remove them from the record.

[18] I was not involved in the circumstances surrounding the change from the plaintiffs' first to second counsel . However the reasons for the plaintiffs' second, third and fourth counsel removing themselves from the record are similar. The plaintiffs refuse to provide a realistic financial retainer to counsel and refuse to pay for services that counsel provide unless the specific task for which counsel is charging has been approved by the plaintiffs in advance. It is simply not possible for counsel to prepare for trial on that basis.

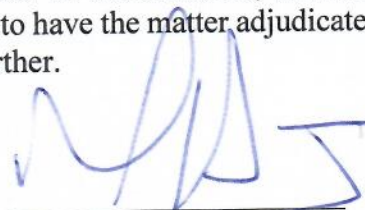
[19] The plaintiffs fourth counsel asked for a financial retainer of \$25,000. The plaintiffs took the view that that was unreasonable. During the motion to remove the plaintiffs' fourth counsel I told Mr. Wiseau that any lawyer acting on this matter would demand a financial retainer upfront. I also told Mr. Wiseau that in my view, the \$25,000 retainer that his fourth counsel requested was very low. I would have expected counsel facing an imminent 10 day trial, for a client outside of the jurisdiction, with whom they have no prior relationship to demand a retainer of somewhere between \$75,000 and \$150,000.

[20] I reiterated to Mr. Wiseau on that call that under no circumstances will the January 6 trial date be postponed.

[21] The plaintiffs have used their lack of counsel as an excuse in the past to amend the case timetable. I have a significant concern that they will try to do so again at the opening of trial, particularly given the short amount of time between now and trial. The plaintiffs will, however, have to seek an appoint counsel who are available for a ten day trial to commence on January 6, 2020.

[22] I understand that relationships between client and counsel can breakdown through no fault of either and that accommodation must sometimes be made for that. In this situation, however, the fault clearly lies with the plaintiffs. The defendants are entitled to have the matter adjudicated. The plaintiffs should not be permitted to delay adjudication any further.

DATE: December 2, 2019

A handwritten signature in blue ink, appearing to be 'J. Koehnen', written over a horizontal line.

Koehnen J.